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BY FAX OR EMAIL

January 27, 2022

Via ECF

Honorable Nelson S. Román
United States District Judge
United States Courthouse
Southern District of New York
300 Quarropas Street, Room 630
White Plains, New York 10601

Re: *USA v. Nicolaus Wynberg* -- **SUPPLEMENTAL SENTENCING MEMORANDUM**
20-Cr-386 (NSR)

Dear Judge Román:

In anticipation of Mr. Wynberg's sentencing before you now scheduled for February 10, 2022 at 1:00 p.m., I am writing to you in response to the government's sentencing submissions with attachments filed on January 11, 2022 and January 25, 2022.

I am compelled to make this supplemental submission to correct some of the inaccuracies and misrepresentations contained in their submissions.

The government's sentencing submission dated January 11, 2022 (Docket Document No. 45) seeks a sentence that exceeds the stipulated guideline sentencing range of forty-one (41) to fifty-one (51) months as set forth in the government's plea agreement. In our December 22, 2021 sentencing submission, we brought to your Honor's attention that at the time of the events which are charged, Mr. Wynberg was "overmedicated," taking a prescribed daily dosage of 120 mg of the stimulant Adderall which is three times greater than the recommended daily adult dosage (see defendant's December 22, 2021 sentencing submission, pp. 3-4 and p. 17 of Dr. Bardey's report which was attached).

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The government in its January 11, 2022 submission at page nine states:

Although the defense claims that he was "overmedicated" on Adderall when he committed his crimes, which they assert led to an increase in his paranoia, his use of medication was as prescribed, and only started on June 25, 2020, long after he had asked Witness-2 for help purchasing large amounts of explosive material and ammunition.

This is inaccurate. Attached please find selected medical records reflecting large, prescribed doses of Adderall for over a year. The medication records reflect prescribed daily dosages of 120 mg of Adderall continuously from May 1, 2019 until the time of his arrest in July 2020 - all prescribed by no less than four clinicians (see Exhibit A attached hereto). If there is any question as to the state of Mr. Wynberg's mental health at the time of his arrest, the Court need go no further than examining the photos taken by the FBI of the trailer where he lived in squalor at the time of its search and his arrest (see Exhibit B - five photos).

The government in that same submission at page three, under the caption "Law Enforcement Seized a Stockpile of Explosives, Guns, and Other Weapons," informs this Court that pursuant to a search warrant they recovered "at least four firearms which included at least two explosive devices." (Doc.45 at p. 3). A handgun, rifle and two steel pipes that had no detonation mechanism were recovered during the search of his trailer and this constitutes the four firearms addressed in the plea agreement. An FBI laboratory report of the two steel pipes also revealed that "there was no attached fusing system present in either device," that both contained smokeless powder and that "[s]mokeless powders are low explosives." (FBI Laboratory Report dated August 20, 2020, pp. 2-3, Bates stamped USAO_001156-1157).

But most concerning is the picture on page three of their submission with the legend "Recovered Pistol." This is a photograph of a Tiberius Arms T9 paintball pistol recovered in evidence (USAO_000047). The white printed legend on the side of the paintball gun says:

WARNING: Serial No. T9-7539 Patent No. 6,892,718 Eye protection designed specifically for paintball must be worn by the user and persons within range

(see Exhibit C attached hereto, same discovery photo with Bates stamp and our enlargement).¹ The government's use of a paintball pistol in an effort to poison this Court's thinking as to this defendant to accomplish their goal of obtaining a sentence greater than that set forth in their plea agreement and the forty-one (41) months recommended by the Probation Department is truly disturbing.

¹ Noticeably absent from the picture in their submission is the discovery Bates stamp.

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On January 25, 2022, Document No. 46, the government submitted a letter from the defendant's own mother in support of their end to obtain a significant sentence. That letter needs close analysis as it is riddled with lies.

Initially it should be remembered that as set forth in the Bardey report (pages 15-17), the PSR (§ 51, p. 19), and reviewed medical records, Wynberg has reported significant abuse by his mother as a child that "manifested clinically significant psychiatric symptoms which have caused significant impairments in every aspect of his life" (Bardey report attached to defendant's 12/22/21 sentencing submission, p. 17).

In her letter, his mother states: "I only found out the details of the charges when I read the Pre Sentence Report, and the victims statements in the public record this week." This is a lie.

The complaint charging Mr. Wynberg has been open on PACER for public review since July of 2020 (see Docket Doc. No. 2). On April 20, 2021 his mother called my office and spoke with my paralegal who memorialized their conversation. The mother reported that she had gone onto PACER and reviewed the docket. I also spoke to his mother later that day. She wanted to know where her son was and wanted to talk to me about the case. I told her that I could not discuss the case with her. She informed me that she was a licensed clinical social worker and that she understood confidentiality, but that she had his power of attorney and therefore could talk to me. I informed my client of the conversation and undoubtedly this led to his sending the Revocation of Power of Attorney. Yet in her letter, she references the power of attorney and states: "[f]rankly, I had forgotten I had it."²

In her letter she references her receipt from Mr. Wynberg of a Revocation of Power of Attorney form which she says she received "during the Mother's Day weekend 2021" which she took as a "'Message' of some kind." This too is a lie. Mother's Day was May 9, 2021. The notarized revocation of power of attorney attached to her letter (Document No. 46) is dated May 12 and the envelope attached is postmarked May 26, 2021.

Regarding her effort to show compassion for her son insisting she paid "for legal services when he got in trouble" this is controverted by the fact that when Mr. Wynberg was arrested, convicted and sentenced in 2016 he was at all times represented by a public defender.

² She asserts she has read the "Pre Sentence Report." The presentence report is not in the public record. In fact, the PACER Docket entry No. 42 cautions:

By Order of the Board of Judges, effective (02/10/2014), all presentence reports will be electronically filed with the Court, and will be viewable by ONLY the attorney for the government, the attorney for the defendant, the presiding judge and all Court users. Any further dissemination is prohibited.

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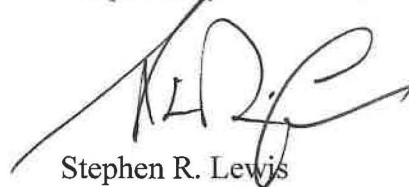
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Once more it must be realized this letter is from a woman who has been accused by her son of "ritualistic abuse" (Bardey report p. 3 attached to 12/22/21 sentencing submission).

Serious and lengthy incarceration is appropriate for dangerous and evil people. As attested to by Dr. Bardey in his report, Nicolaus is not dangerous or evil but a man afflicted with mental illness that "significantly impacted on his judgment and decision making at the time of the offense . . ." (Bardey report, p. 18). He has a mental illness that can be managed. He has proven himself to be trustworthy and a hard worker while incarcerated all without incident (PSR ¶ 8). I have attached a letter from Mr. Wynberg for your consideration (see Exhibit D attached).

The Probation Department has recommended a sentence of forty-one (41) months (the low end of the stipulated guideline range) and two (2) years supervised release. We ask that you consider a sentence less than that.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SRL', with a long horizontal line extending to the right.

Stephen R. Lewis

SRL:dc

Encl.

cc: AUSA T. Josiah Pertz (via ECF)

EXHIBIT A

Yes

No

Any birth weight concerns?

Yes

No

Full term?

Yes

No

Any other significant information that may affect care or place the child or adolescent at risk (e.g. accidents or injuries):

Domains

Domain	Score	Score Type	Interpretation	Problem Identified	Strength Identified	Manual?	Remarks
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No information on file

Outcomes

Enter Outcomes

No information on file

Upload

Scanned Document

Wynberg, N-02.27.76-HS.pdf

Medications

Medication History

Medication	Started	Ended	Frequency	Route	Duration	Dose	Strength	Provider	Prescribed by	Address	Take/sig	Dosage History
Adderall 15 MG Oral Tablet	8/16/2019 12:00 AM	8/20/2019 12:00 AM		ORAL	8 days		15 MG		Yugandhar Munnangi		Take two (2) tablets by mouth four times a day, as needed, Maximum Daily Dose 8 tablets	2.00 Tablet Four Times a Day, As Needed
Adderall 30 MG Oral Tablet	5/1/2019 12:00 AM	5/30/2019 12:00 AM		ORAL	30 days		30 MG				Take one (1) tablet by mouth four times a day, Maximum Daily Dose 4 tablets	1.00 Tablet Four Times a Day
											Take one	

EXHIBIT B





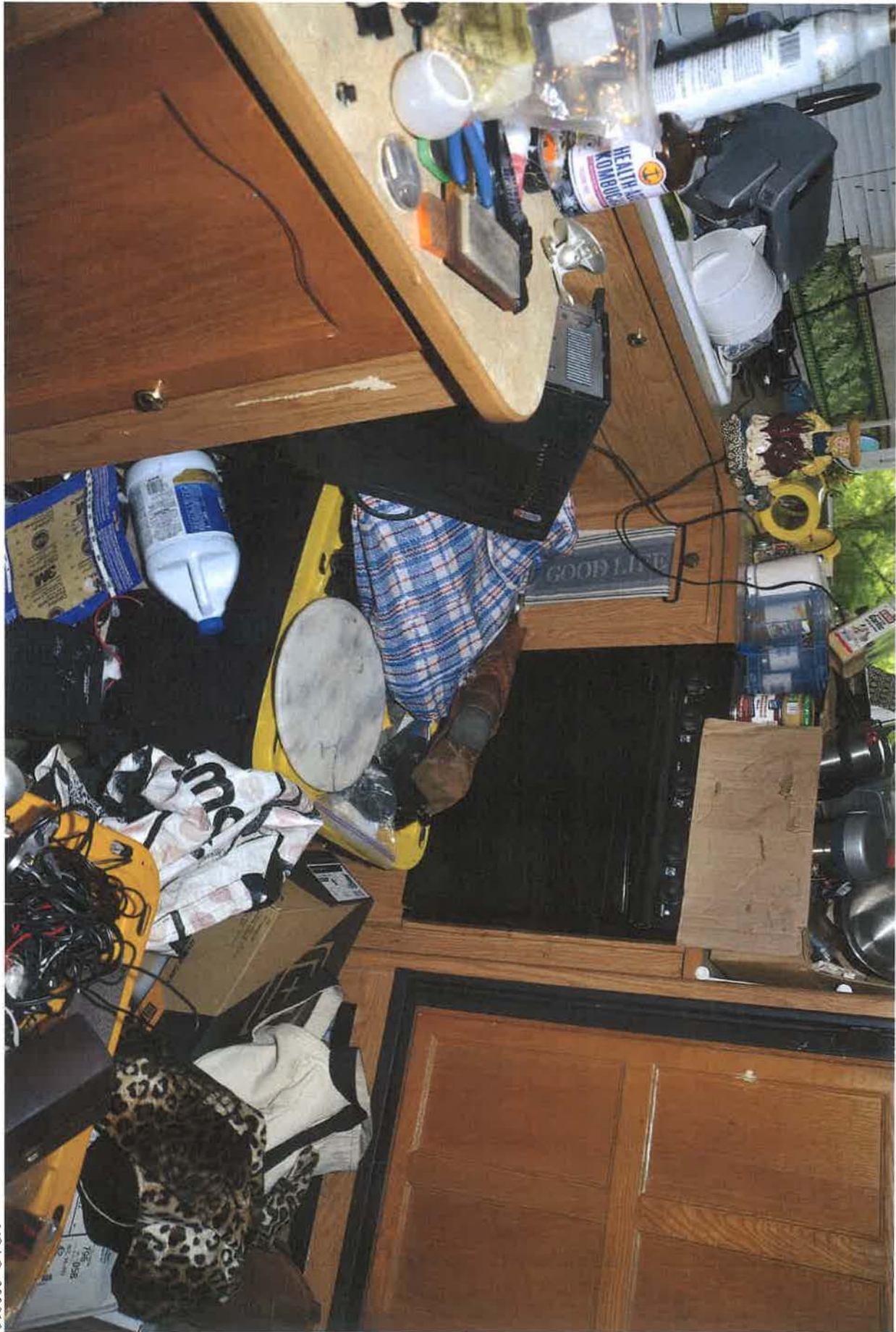
USAO_000004



USAO_000007



USAO_000008



USAO_000010

EXHIBIT C



USAO_000075



EXHIBIT D

January 26, 2022

Dear Judge Roman,

I want to express my regret and apologize for my actions, for which I take full responsibility. I've had a long time to think about my poor behavior, and the bad decisions that not only led to my incarceration, but cost me everything I had in this world. I am embarrassed and ashamed, and after a lot of reflection, now under appropriate psychiatric care and proper medication I clearly understand that there is no question that my actions were unacceptable.

I've been on disability for more than a decade for Complex Post Traumatic Stress Disorder, Agoraphobia & Severe Panic Disorder. At the time of my offense, I was significantly over medicated especially with respect to the 120mg of Adderall and 6mg of Klonapine, amongst other medications that I was prescribed to take daily. These medications, specifically the Adderall severely exacerbated the constant anxiety, panic & fear that I live with every moment of my life.

I never had any intentions of harming anyone nor have I ever physically harmed another human being. I only wanted to protect myself from what I felt was an ever present threat to my well-being. At the time I believed that I was thinking clearly, and my thoughts, anxiety and fear were all rational. I now realize, after 18 months without Adderall, that my thought process was anything but rational. Since being off of Adderall, I haven't experienced delusional thinking nor anywhere near the same level of anxiety, fear and paranoia that afflicted me at the time of my offense.

Going forward I know that I need to, and fully intend to find and maintain a healthy and consistent mental health treatment plan, and a stable and supportive environment where I can feel safe, and begin to grow in a positive direction. I am hoping that my supervised release officer can help me in achieving those goals.

I have read the letters from my landlord Trish and Judy and Bill who lived with her. Her friend Sarah T. Jones, Esq. I met twice for a total of fifteen minutes. She hired me to paint and repair a property she was selling, paid me and told me I did a great job. While Bill and I never liked each other, Trish my landlord I considered my friend. Reading her letter broke my heart and I am so sorry that I made her feel this way as she is a good, decent person.

As to my mother's letter, all I can say is she has abused me much of my early life and I see her efforts as a continuation of that abuse.

In 2016 I was sent to jail for my violation of the Safe Act in possessing a rifle I needed to and failed to have registered. This was my only criminal conviction and I spent 16 months in jail

and then a year on parole. I was early discharged from my parole and on May 1, 2018 I was even granted a certificate of relief from civil disabilities.

But in 2019 I was again given Adderall using the overprescribed dosage (120 mg per day) and my life began to unravel, leading me to live in a filthy trailer, hoarding and doing bizarre things. I am in a better place now. I realize my mental illness needs to be addressed and I feel confident I can live a law abiding life if given the opportunity.

Upon my release, my primary goal is to establish a relationship with a mental health facility and begin to work through my mental illness. As soon as I am ready, I plan to obtain my commercial driver's license and begin to build a positive and productive future for myself.

Thank you for your time your Honour.

Nicolaus Wynberg